6. **Appendix F** – Appeal Decision dated August 31, 2005, (11a., 12a, 13a., 14a., and 15a.)
7. **Appendix G** – Rehearing En Banc Decision Denial dated November 14, 2005, (16a.)

SEPARATE APPENDICES FOR DOCUMENTED FACTS AND EVIDENCES:

8. **Appendix H** – The Petitioner's E.E.O.C.'s Filing Statutory Period Starting Date Confirmed by Mr. Todd S. Garrison dated October 22, 2001, (17a. and 18a.)
9. **Appendix I** – State Bar of Georgia Letter that confirms that the Attorney Charles D. Best is Shady and Unscrupulous as to performing a Undisclosed Dual Agency dated July 20, 2005, (19a. and 20a)
10. **Appendix J** – The Doctor's Letter from Kaiser Permanente Dated September 20, 2002, (21a.)
11. **Appendix K** – State Bar of Georgia Letter that confirms that the Attorney Charles D. Best is Shady and Unscrupulous as to performing a Undisclosed Dual Agency dated December 01, 2005, (22a., 23a., 24a., and 25a.)

IN THE
Supreme Court of the United States

Sgt. Emmett L. Williams

Petitioner, Plaintiff

-Vs.-

State of Georgia, "et al." 05-11275-A, and three other Incorporated Cases known as: 05-15648-J and 05-15760-C and Civil Action Case: (1:05-CV-2274 where a Final Order and Judgment have been received pending filing of Appeal.)

Respondents, Defendants

Petition for a Writ of Certiorari
To the United States Court of Appeal
For the District Court of Northern Georgia

The Petitioner, Sgt. Emmett L. Williams, prays that a Writ of Certiorari issue as to review the Opinions of the Final Orders and Judgments of the United States District Court and the Court of Appeals in the District Court of Northern Georgia and for the Eleventh Circuit entered in this proceeding on February 24, 2005 and August 31, 2005.

Jurisdiction.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals were entered on February 24, 2005 and August 31, 2005. The Petition for rehearing and rehearing En Banc were denied on November 14, 2005, and this Petition for Certiorari is being filed within 90 days of that date. The Jurisdiction of this Court is invoked under 42 U.S.C. &2000e-5(f) and 28 U.S.C. &1331, &1337, &1343(4) because the Petitioner is a "person" within the meaning of 42 U.S.C. &2000e(a), and the Petitioner is a United States American Citizen and is subject to the jurisdiction of this Federal Court. Jurisdiction is founded upon the Constitution of the United States pursuant to the Civil Rights Act of 1964 (Title VII), as amended by the Civil Rights Act of 1991, 42 U.S.C., &2000e et. seq., to include Title I and Title V of the American with Disabilities Act of 1990 (ADA); and upon the inherent and the traditional powers of this Court to do Justice.

Statement of the Case

The Respondents were all properly served with the Petitioner's Federal Lawsuit Complaint by the Attorney Charles D. Best on September 27, 2002 where the Attorney Charles D. Best was in possession of the United States Courthouse Serving Papers with all of the Respondents proper signatures to be delivered and filed at the United States Federal Courthouse, but the Attorney Charles D. Best decided to sell, and the Respondents decided to purchase the United States Courthouse Serving Papers as Retaliation as to Dead Docketing this Federal Case against the Petitioner where the Attorney Charles D. Best and the Respondents proceeded again under this undisclosed Dual Agency on February 12, 2003 as to Dismissing the Petitioner's Federal Case under a illegal, unlawful, and undisclosed Dual Agency Relationship created by the Attorney Charles D. Best and the Respondents where that the Petitioner was totally unaware of the dual agency.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner's United States Guaranteed Constitutional Civil Rights, Liberties, and Freedoms under Title I, Title V, and Title VII as well as the Georgia State Law of Dual Agency and the Federal Retaliation and

Discrimination Laws of the E.E.O.C. and the United States Constitution.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by permitting, allowing, and aiding the Respondents in the constant building up of **Referencing Case Law without any Evidential Support or cannot prove any of their claims** that was built on the foundation of lies and the total inaccurate counting the days and months of the Petitioner's E.E.O.C. 300 days or 90 days Filing Statutory Periods where the United States District Court and the United States Court of Appeals have refused to count the Petitioner's E.E.O.C. days and months accurately while permitted, allowed, aided, and accepted the Respondents' lies over the Petitioner's documented evidential factual proof where the Petitioner have shown both courts documented facts where both courts have ignored the Petitioner's documented evidential factual proof and proceeded to dismiss the Petitioner's Federal Case in favor of the Respondents' Referencing Case Law without any Evidential Support of lies where the Respondents have made it very obvious that the Respondents and the United States Direct Court and the United States Court of Appeals have unconstitutionally and racially broken and violated the Georgia State Law of Undisclosed Dual

Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution.

The Petitioner can prove beyond any shallows of any doubts that the Respondents abandoned and overthrew all of their own State of Georgia DOD Policies, Procedures, Guidelines, and Regulations as well as unconstitutionally and racially broken and violated the Georgia State Law of Undisclosed Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution while the Petitioner was under the Doctor's Care and Treatment awaiting surgery.

The Respondents have never complied with the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution within the boundaries of this Federal Case where the Respondents have violated the Georgia State Law of Dual Agency as well as the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution where the United States District Court and the United States Court of Appeals have granted the Respondents a license to continue to break and violate the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the United States Constitution.

On or before September 27, 2002, the Attorney Charles D. Best and the Respondents created an illegal, unlawful, and undisclosed Dual Agency Relationship where the Respondents purchased in Retaliation against Petitioner an illegal, unlawful, and unconstitutional Dead Docket against this Federal Case where the Respondents immediately proceeded toward carrying out a Jim Crow Progressive Discipline, a Jim Crow Adverse Action, a Jim Crow Termination, and a Jim Crow Prosecution **where all of these events taken place after the Petitioner had already filed his Lawsuit in Federal Court on August 08, 2002** where these events were in direct violation of the Georgia State Law of Undisclosed Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution under Title I, Title V, and Title VII.

The Respondents would have the United States Federal Court System to believe that the United States Federal E.E.O.C. issued the Petitioner a bogus and invalid 90 days Right to Sue Letter **from May 15, 2002 to August 13, 2002** where the Petitioner can prove beyond any shallows of any doubts that the Petitioner's 300 days E.E.O.C. Filing Statutory Period started on **October 22, 2001** and ended on **August 18, 2002** with the Intake Dismissal Form Letter addressed to the Petitioner **by Mr. Todd S. Garrison as the Intake**

Coordinator for the Georgia Commission on Equal Opportunity.

This Intake Dismissal Form Letter of Mr. Todd S. Garrison will confirm beyond any shallows of any doubts that October 22, 2001 was the starting date of the Petitioner's 300 days E.E.O.C. Filing Statutory Period where the Petitioner's Lawsuit that was filed in Federal Court on August 08, 2002 **was filed on the 85th day** within the 90 days Right to Sue Letter Statutory Period **that existed from May 15, 2002 to August 13, 2002** and **was filed on the 290th day** within the 300 days E.E.O.C. Filing Statutory Period **that existed from October 22, 2001 to August 18, 2002** where both sets of dates were within total and complete compliance of the statues according to the Federal Laws of the E.E.O.C. and the United States Constitution where the Petitioner's Lawsuit that was filed in Federal Court on **August 08, 2002** is legal, valid, and enforceable where the Petitioner has **RESCINDED** all Undisclosed Dual Agency transactions made by the Attorney Charles D. Best and the Respondents after September 27, 2002 including the February 12, 2003 dismissal of Federal Case Number 1:02-CV-2197 in accordance with the Georgia State Law of Undisclosed Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution.

The Respondents are members of the Georgia National Guard where the Respondents have taken an oath to this nation, to the United States Constitution, to the United States American Citizens, and to almighty God that the Respondents would shield, protect, and defend the United States Constitution and the United States American People at all cost deemed to be necessary where the Respondents are in violation of their own oath as to this nation, to the United States Constitution, to the United States American Citizens, and to almighty God because this Federal Case has proven that the Respondents are not capable enough of live up to their Constitutional oath.

The Respondents are in direct violation of their own State of Georgia DOD Policies, Procedures, Guidelines, and Regulation as well as Georgia State Law of Undisclosed Dual Agency to include the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution just because the Petitioner decided to exercise his United States Guaranteed Constitutional Civil Rights, Liberties, and Freedoms under Title VII, the E.E.O.C., and the United States Constitution by filing his Lawsuit in Federal Court on August 08, 2002 where according to the Georgia State Law of Undisclosed Dual Agency and the Federal Retaliation and Discrimination Laws of the

E.E.O.C. and the United States Constitution, the August 08, 2002 Lawsuit is still legal, valid, and enforceable.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by permitting, allowing, and aiding the Respondents in their inaccurate counting of days and months of the Petitioner's E.E.O.C 300 days and 90 days Statutory Periods that can be used by the Respondents as a direct means as to continue to Elude and Obstruct Federal Justice where the United States District Court and United States Court of Appeals have unconstitutionally and racially permitted and allowed the Respondents to illegally and unlawfully Dead Docket and Dismiss this Federal Case under an illegal, unlawful, and undisclosed Dual Agency Relationship that was designed as a direct means of Retaliating against the Petitioner and undermining the entire Federal Judicial System where the United States District Court and the United States Court of Appeals have granted the Respondents a license as to continue to violate and discriminate against the Petitioner's United States American Citizenship where these activities surrounding this Federal Case are unconstitutionally and racially discriminatory on the part of the Respondents as well as the United States District Court and the United States Court of Appeals.

Reason for Granting the Writ.

1. The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by Granting the Respondents the Unconstitutional Rights of Breaking and Violating the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United State Constitution under Title I, Title V, and Title VII.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner and against the Georgia State Law of Dual agency where it is illegal and unlawful to create or conduct a Dual Agency Relationship within the boundaries of the State of Georgia unless all parties are made fully aware of the Dual Agency created and where all parties agree to all of its terms and conditions in writing.

GEORGIA STATE LAW GENERAL DEFENITION OF DUAL AGENCY: A dual agency arrangement is one in which an agent has been empowered to act for more than one party in a particular transaction. Dual Agency is only

allowed with the knowledge and consent of all parties involved, and the agreement for such a relationship must be in writing. Without proper disclosure of the dual agency, no commission or fees may be earned by the agent, the agent may be liable to one or more parties for actual and /or punitive damages, and in some circumstances, one or more parties to the transaction may elect to rescind the transaction.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner and against the Georgia State Law of Dual Agency where all transaction made by the Attorney Charles D. Best after September 27, 2002 has been rescinded to be null and void.

The Respondents deliberately violated the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution after the Petitioner filed his Federal Lawsuit in the Federal Court on August 08, 2002 where the United States District Court and the United States Court of Appeal have unconstitutionally and racially violated and discriminated against the Petitioner by granting the Respondents the unconstitutional rights to continue to violate and

discriminate against the Petitioner with no regard whatsoever as to the Petitioner's United States American Citizenship under Title I, Title V, and Title VII.

2. The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by permitting and allowing the Respondents to purchase a Dead Docket against the Petition's Federal Lawsuit under a illegal, unlawful, and undisclosed Dual Agency Relationship with the Attorney Charles D. Best.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by permitted and allowing the illegal and unlawful Dual Agency Relationship between the Attorney Charles D. Best and the Respondents to exist after unconstitutionally buy and sell the Petitioner's United States Guaranteed Constitutional Civil Rights, Liberties, and Freedoms under Title VII, the E.E.O.C., and the United States Federal Court System by using the United States Courthouse Serving Papers as an instrument of exchange and purchase while reducing the Petitioner's United States American Citizenship down to something less than a slave where the Respondents have

purchased the Petitioner's Federal Case that was filed on August 08, 2002 from the Attorney Charles D. Best as to be Dead Docketed including on February 12, 2003 Dismissed under a undisclosed Dual Agency Relationship where these activities and the Final Orders and Judgments that were made against the Petitioner that have been condoned by the Federal Courts are unconstitutional and racist.

According to the Georgia State Law of Dual Agency, the Petitioner has the right and authority to **rescind** all transactions made by the Attorney Charles D. Best after September 27, 2002 **where those transactions are rescinded including the illegal, unlawful, and unconstitutional February 12, 2003 dismissal of the Petitioner's Federal Case against the Respondents** where the Petitioner declare that the Federal Case Number 1:02-CV-2197 as to being never dismissed from this Federal Case that was filed on August 08, 2002 on the 290th day within the Statutory Limits of the 300 days Filing Statutory Period and on the 85th day within the Statutory Limits of the 90 days Right to Sue Letter Statutory Period **where in accordance to Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution, the Petitioner is declaring that the Lawsuit Case Number 1:02-**

CV-2197 to be active, legal, valid, and enforceable under the Federal Laws of the E.E.O.C. and the United States Constitution.

3. The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by forcing the Petitioner and the Petitioner's Federal Lawsuit filed on August 08, 2002 to consciously continue to be apart of and to participate within an illegal, unlawful, and undisclosed Dual Agency Relationship that was created by the Attorney Charles D. Best and the Respondents.

The Petitioner has **rescinded** all transactions made by the Attorney Charles D. Best after September 27, 2002 including the illegal, unlawful, and undisclosed Dual Agency February 12, 2003 dismissal of Federal Case numbered 1:02-CV-2197 in accordance with the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutional and racially violated and discriminated against the Petitioner by forcing the Petitioner to be apart of and to participate

within an illegally and unlawfully Dual Agency Relationship under a unconstitutional Dead Docket against the Petitioner's Federal Case that was filed against the Respondents where the United States District Court and the United States Court of Appeals have granted the Respondents the unconstitutional rights as to breaking and violating the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution.

In accordance with the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution, the Petitioner has already exercised his legal right and authority to **Rescind** all transactions made by the Attorney Charles D. Best after September 27, 2002 including the unconstitutional dismissal of the Federal Case Numbered 1:02-CV-2197 where the Petitioner has already declared that this Lawsuit filed in Federal Court on August 08, 2002 within the limits of the statues to be active, legal, valid, and enforceable according to the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United Constitution. The United States District

Court and the United States Court of Appeals have permitted and allowed the Respondents to be granted an unconstitutional license as to breaking and violating the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of E.E.O.C. and the United States Constitution is an act of discrimination and racism.

4. The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner's E.E.O.C. 300 days Filing Statutory Period that existed from October 22, 2001 to August 18, 2002 where August 08, 2002 was the 290th day, and the Petitioner's E.E.O.C. 90 days Right to Sue Letter Statutory Period that existed from May 15, 2002 to August 13, 2002 where August 08, 2002 was the 85th day where the Petitioner's Lawsuit was filed in Federal Court on August 08, 2002 that was filed within the legal limits of both sets of dates within full and complete compliances of the statues where the Petitioner was under the Doctor's Care and Treatment awaiting Surgery.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner's

E.E.O.C. 300 days Filing Statutory Period **that existed from October 22, 2001 to August 18, 2002** and the Petitioner's E.E.O.C. 90 days Right to Sue Letter Statutory Period **that existed from May 15, 2002 to August 13, 2002** where the Petitioner's Lawsuit that was filed in Federal Court on **August 08, 2002** within full compliances of the statues where the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by permitting and allowing the Respondents to illegally and unlawfully Dead Docket and Dismiss this Federal Lawsuit under a illegal, unlawful, and undisclosed Dual Agency Relationship while the Petitioner was under the Doctor's Care and Treatment where the Petitioner is within his legal rights and authority as a United States American Citizen and as the original "person" that filed the original Lawsuit on August 08, 2002 in Federal Court do hereby **rescind** all transactions made after September 27, 2002 of the Attorney Charles D. Best including the illegal, unlawful, and undisclosed Dual Agency February 12, 2003 dismissal of the Petitioner's Federal Case Numbered 1:02-CV-2197 in accordance with the Georgia State Law of Dual Agency where the Petitioner is declaring that this Federal Lawsuit filed on August 08, 2002 is indeed active, legal, valid, and enforceable under the Federal Laws of the E.E.O.C. and the United States Constitution.

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have designed hypocritical unconstitutional views as a definition of making up excuses just to say that it is okay to break and violate the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution where it is illegal, unlawful, and unconstitutional to Dead Docket and Dismiss a State or Federal Case under a undisclosed Dual Agency Relationship.

Conclusion

The Final Order and Judgment of the United States District Court and the United States Court of Appeals have unconstitutionally and racially violated and discriminated against the Petitioner by permitting, allowing, and aiding the Respondents to continue to violate and discriminate against the Petitioner's United States Guaranteed Constitutional Civil Rights, Liberties, and Freedoms under Title I, Title V, and Title VII and the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution where the Petitioner has the right and authority to **rescind** all transactions made by the Attorney Charles D. Best after September 27, 2002 in accordance with the Georgia State Law of Dual Agency and the Federal Retaliation and Discrimination Laws of the

E.E.O.C. and the United States Constitution where it is illegal, unlawful, and unconstitutional to Dead Docket and Dismiss a State or Federal Case under a Dual Agency Relationship unless all parties are made fully aware of the dual agency and where all parties have agreed in writing to its terms and conditions where the Petitioner has rescinded all of the Attorney Charles D. Best's Transactions after September 27, 2002 and declared that the Lawsuit that was filed by the Petitioner on August 08, 2002 as being never dismissed from this Federal Case and is active, legal, valid, and enforceable under the Georgia State Law of Undisclosed Dual Agency and the Federal Retaliation and Discrimination Laws of the E.E.O.C. and the United States Constitution.

For all of the reasons explained above, Sgt. Emmett L. Williams' Petition for Certiorari should be granted and the unconstitutional Final Orders, Judgments, and Decisions of the United States District Court and the United States Court of Appeals should be reversed and remanded for all future proceedings to be consistent with this action in the name of Justice because Justice So Requires.

Respectfully Submitted,

/s/ Emmett L. Williams
Sgt. EMMETT L. WILLIAMS
Pro-Se Litigant

OPPINIONS, FINAL ORDERS,

AND JUDGMENTS

APPENDIX

PAGES FROM: (1a. thru 16a.)

APPENDICES: (A THRU G)

APPENDIX A – FINAL REPORT AND RECOMMENDATION AND ORDER DATED FEBRUARY 11, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

SGT. EMMETT L. WILLIAMS

Plaintiff,

v.

CIVIL ACTION FILE

NO. 1:04-CV-2415-RLV

STATE OF GEORGIA DEPARTMENT OF DEFENSE NATIONAL GUARD HEADQUARTERS, et al.,

Defendants.

FINAL REPORT AND COMMENDATION AND ORDER

Plaintiff, who is proceeding without counsel, filed this action on August 19, 2004, alleging violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. & 2000e, et seq. Defendants' Motion to Dismiss with Prejudice (Doc. 5) is currently before the court. Two other motions filed by defendants – seeking to amend their answer to plaintiff's complaint and to compel plaintiff's deposition (Docs. 4, 71, 82) – are also before the court, as well as a slew of frivolous motions (37 in all) filed by plaintiff (Docs. 6-22, 25, 44-45, 47-48,51,53-59, 63,73-77).

Appendix A

For reasons discussed below, the undersigned **RECOMMENDS** that defendants' Motion to Dismiss (Doc.5) be **GRANTED** and that this action be **DISMISSED with prejudice**. The remaining motions are **DENIED as moot.**

I. DISCUSSION

Defendants argue that plaintiff's complaint should be dismissed because he failed to file it within 90 days of receiving a right-to-sue notice from the Equal Employment Opportunity Commission ("EEOC"). Title VII requires claimants who wish to file a civil action to do so within 90 days of receiving such notification from the EEOC. 42 U.S.C. & 2000e-5(f)(1).

Plaintiff states in his complaint that he received the EEOC notice on May 18, 2002 (Doc.1 / 16). Thereafter, plaintiff filed a timely complaint against defendants in this court on August 8, 2002. (Civil Action No. 1:02-CV-2197-RLV). However, plaintiff volumtarily dismissed that action without prejudice on February 12, 2003. (Id., Doc.4). On August 19, 2004, plaintiff filed the instant action, making essentially the same allegations as in his original complaint.

Plaintiff plainly did not file his current complaint within 90 days of receiving notice of his right to sue. For this reason, the action is time barred and must be dismissed.

Appendix A

The Fact that plaintiff timely filed his original complaint does not require a different result. See Price v. Digital Equipment Corp., 846 F.2d 1026, 1027 (5th Cir. 1988)(finding Title VII Claim raised in second suit to be time barred, where original Title VII suit was dismissed without Prejudice for failure to prosecute); Brown v. Hartshorne Public Sch. Dist. NO. 1, 926F.2d959,961(10th Cir. 1991)(finding second Title VII suit barred under similar circumstances; "It is hornbook law that, as a general matter, a voluntary dismissal without prejudice leaves the parties as though the action had never been brought."); Sampson v. AT&T Corp., 11 F.Supp.2d 1380, 1381-82(N.D.Ga. 1998)(same); see also Stein v. Reynolds Securities, Inc., 667F.2d33,33-34 (11th Cir. 1982)(Finding that a prior suit dismissed without prejudice did not toll that applicable statue of limitations; "The fact that dismissal of an earlier suit was without prejudice does not authorize a subsequent suit brought outside the otherwise binding period of limitation.").

Some of plaintiff's various filings with this court could be construed as presenting an argument that the 90-day period should be tolled due to mishandling of plaintiff's case by his former attorney. (See, e.g., Doc. 13 at 2-3; Doc. 18 // 6-9). Although the 90-day time limit is subject to equitable tolling, "(f)ederal courts have typically extended equitable relief only sparingly. "Irwin v. Department of Veterans Affairs, 498 U.S. 89, 95-96, 111 S.Ct.453,112 L.Ed.2d435(1990).

Appendix A

"The burden is on plaintiff to show that equitable relief is warranted." Justice, 6 F.3d at 1479. Plaintiff has not met the burden in this case. Attorney error does not provide grounds fot tolling a statue of limitations. See, e.g., Steed v. Head, 219F.3d 1298, 1300 (11th Cir.200)(finding that "(a)n attorney's miscalculation of the limitations period or mistake is not a basis for equitable tolling"); Sandvik v. United States, 177 F. 3d 1269, 1270 (11th Cir. 1999)(holding that attorney negligence will not warrant equitable tolling); see also Irwin, 498 U.S. at 96 ("principles of equitable tolling....do not extend to what is at best a garden variety claim of excusable neglect"). Accordingly, the court finds that equitable tolling is not available in this case.

Appendix A

II. CONCLUSION

For the reasons stated, the undersigned **RECOMMENDS** that defendants' Motion to Dismiss (Doc.5) be **GRANTED** and that this action be **DISMISSED with prejudice**. The remaining motions (Doc. 4, 6-22, 25, 44-45, 47-48, 51, 53-59, 63, 71, 73-77, 82) are **DENIED as moot.**

IT IS SO ORDERED AND RECOMMENDED, this 11th day of February, 2005.

/s/ Gerrilyn G. Brill
GERRILYN G. BRILL
UNITED STATES MAGISTRATE JUDGE

APPENDIX B – ORDER FOR SERVICE OF FINAL REPORT AND RECOMMENDATION DATED FEBRUARY 11, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

SGT. EMMETT L. WILLIAMS

Plaintiff,

v.

CIVIL ACTION FILE

NO. 1:04-CV-2415-RLV

STATE OF GEORGIA
DEPARTMENT OF DEFENSE
NATIONAL GUARD
HEADQUARTERS, et al.,

Defendants,

ORDER FOR SERVICE OF
FINAL REPORT AND RECOMMENDATION

Attached is the report and recommendation of the United States Magistrate Judge made in this action in accordance with 28 U.S.C. & 636(b)(1) and this Court's Local Rules, L.R. 73 and L.Cr.R. 58.1, N.D.Ga. Let the same be filed and copy, together with a copy of this Order, be served upon counsel for the parties.

Pursuant to 28 U.S.C. & 636(b)(1), each party may file written objection, if any, to the report and recommendation within ten (10) days of the receipt of this order. Should objections be filed, they shall specify with particularity and alleged error or errors made (including reference by page number to the transcript it applicable) and shall be served upon the opposing party. The party filing objections will be responsible

for obtaining and filing the transcript of any evidentiary hearing for review by the district court. If no objections are filed, the report and recommendation may be adopted as the opinion and order of the district court and any appellant review of the factual findings will be limited to a plain error review. United States v. Slay, 714F.2d 1093 (11th Cir. 1983), cert. Denied, 464 U.S. 1050, 104 S. Ct. 729, 79L. Ed. 2d 189 (1984).

The clerk is directly to submit the report and recommendation with objections, if any, to the district court after expiration of the above period.

SO ORDERED, this 11th day of February, 2005.

/s/ Gerrily G. Brill
GERRILYN G. BRILL
UNITED STATES MAGISTRATE JUDGE